

PROPOSED RULES



City of Saint Paul Rules for Earned Sick and Safe Time (ESST) Ordinance

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1. Purpose of the ESST Ordinance Rules

These rules govern the practices of the Department of Human Rights & Equal Employment Opportunity (“HREEO” or “Department”) in administering the provisions of the Earned Sick and Safe Time (ESST) Law, [Chapter 233](#) of the City of Saint Paul Legislative Code (“Ordinance” or “Chapter”).

2. Definitions

[\(City of Saint Paul Ordinance §233.02\)](#)

- 2.1 “City” means the City of Saint Paul, Minnesota.
- 2.2 “Code” means the legislative code of the City of Saint Paul, title II of the Saint Paul code of Ordinances.
- 2.3 “Contracting Employer” is an Employer that contracts with a staffing agency to receive workers.
- 2.4 “Council” means the City Council of the City of Saint Paul.
- 2.5 “Department” means the Saint Paul Department of Human Rights & Equal Employment Opportunity (“HREEO”).
- 2.6 “Director” means the Director of the Department of Human Rights & Equal Economic Opportunity.
- 2.7 “Domestic Abuse” has the same definition as in Minn. Stats. § 518B.01 or a successor statute.
- 2.8 “Employee” has the same definition as defined in Section 233.02 of the Ordinance. This includes temporary and part-time Employees.
- 2.9 “Employer” as defined in Section 233.02 of the Ordinance.
- 2.10 “ESST” means earned sick and safe time.
- 2.11 “ESST poster” means the standard Workplace Notice Poster created by Department as described at section 233.07(c) of the Code.
- 2.12 “Family Member” has the same definition as in Section 233.02 of the Ordinance and includes any other individual related by blood or whose close association

with the Employee is equivalent of a family relationship and up to one individual annually designated by the Employee.

- 2.13 “Frontloading” is defined as an alternative method of providing ESST hours to Employees. In these cases, an Employer gives Employees the maximum number of hours allowed to accrue in a Year at the beginning of the Year for immediate use.
- 2.14 “Health Care Professional” has the same definition as in section 233.02 of the Ordinance.
- 2.15 “Independent Contractor” has the meaning defined in the Labor and Industry Chapters of the Minnesota Statutes Sections 181.723 and 176.042, as defined in Minnesota Rules Chapter 5224, or as defined in any subsequent related statutes or rules.
- 2.16 “Integrated Enterprises” means separate entities that form a single enterprise. Integrated Enterprises are a single Employer under the Ordinance. Examples of an Integrated Enterprise include, but are not limited to, a single entrepreneur with multiple businesses, a corporation with subsidiaries in the City, a corporation with franchisees located in the City.
- 2.17 “Piecework Compensation” means paying Employees based on how much they produce, rather than an hourly rate. Piecework Compensation is common to agricultural work, call centers, translation, data entry, and manufacturing, for example.
- 2.18 “Ordinance” means [Title XXII Chapter 233 of the City of Saint Paul Legislative Code](#), “Public Health, Safety and Welfare.”
- 2.19 “PTO” means Paid Time Off.
- 2.20 “Staffing Agency” is any business that provides workers to a contracting Employer in exchange for compensation or some other benefit, either temporarily or with the possibility of permanent employment, and during which time workers do not provide any labor directly to the Staffing Agency. The workers may be paid either by the Staffing Agency or the contracting Employer.
- 2.21 “Year” means a regular and consecutive 12-month period, either calendar or fiscal, as determined by an Employer and clearly communicated to each Employee of that Employer.

3. Which Employees are Covered by the ESST Ordinance?

([City of Saint Paul Ordinance §233.02](#))

3.1 General Rules about Covered Employees

- 3.1.1 All Employees, whether full-time, temporary, or part-time are covered by the Ordinance if they work at least 80 hours in a Year within the geographic boundaries of the City of Saint Paul, pursuant to Section 233.02 of the Ordinance.
- 3.1.2 Time spent traveling to work before the Employee's shift has started and traveling home after the Employee's shift has ended are not covered by this Ordinance.

3.2 Employees Traveling Through Saint Paul or Working from Home

- 3.2.1 Employees working from home (or otherwise telecommuting) are covered by the Ordinance if the Employee is working within the geographic boundaries of the City of Saint Paul or if the Employer is located within the geographic boundaries of the City of Saint Paul.
- 3.2.2 Employees working outside of Saint Paul are not covered by the Ordinance for hours worked outside the City.
- 3.2.3 Employees who do not regularly work in the City are protected by the Ordinance if they work at least 80 hours within the geographic boundaries of the City of Saint Paul in 1 Year and only for the time scheduled and worked within the geographic boundaries of the City of Saint Paul. Once an Employee performs work in the geographic boundaries of the City of Saint Paul for at least 80 hours in a Year, that Employee will continue to accrue ESST hours for the remainder of that Year for work scheduled and done within the geographic boundaries of the City of Saint Paul. Employees who travel and make stops for work (for example, to make pickups, deliveries, sales calls, etc.) are protected by the Ordinance for all hours that they perform work within the geographic boundaries of the City of Saint Paul. This includes travel between work sites after having attained at least 80 hours in a Year.
- 3.2.4 Employees who travel through the City and only make incidental stops, such as for gasoline, or changing a flat tire, are not making a stop as a purpose of their work.

3.3 Independent Contractors Exempt from the ESST Ordinance

Independent Contractors are not protected by the ESST Ordinance. “Independent Contractor” has the meaning defined in the Labor and Industry Chapters of the Minnesota Statutes Sections 181.723 and 176.042, as defined in Minnesota Rules Chapter 5224, or as defined in any subsequent related statutes or rules.

4. How Employees Accrue and Bank ESST

[\(City of Saint Paul Ordinance §233.03\)](#)

4.1 General Rules about Accrual

4.1.1 Employers must establish the method of ESST accrual within this subsection at the beginning of the Year. Employers may not change the method of ESST accrual until the next reporting Year.

Example: Banh’s Kitchen has a policy outlining that all Employees will accrue 1 hour of ESST for every 30 hours worked at the start of the Year and that Employees can access their ESST as they earn it. Mid-Year, Banh’s Kitchen management decides to switch to a frontloading system for the remainder of the Year. However, they must wait until the start of the new 12-month period to switch.

4.1.2 Per the accrual method, Employees accrue 1 hour of ESST for every 30 hours worked and cannot accrue fractions of an hour.

Example: If Nancy works 120 hours, she accrues 4 hours of ESST (120 hours worked / 30 = 4 hours of ESST).

4.1.3 Employees begin accruing ESST on their start date and may use ESST as they accrue it.

4.1.4 When calculating how many ESST hours an Employee has accrued, Employers must count all hours actually worked. Employers are not required to count the hours taken off for ESST as hours worked for accrual purposes.

4.1.5 Hourly Employees accrue ESST when they work overtime hours. There is no requirement to provide an overtime rate for ESST accrual.

- 4.1.6 Employees can accrue up a maximum of 48 hours each Year and up to 80 hours in subsequent Years unless their Employer opts to give them more ESST.
- 4.1.7 An Employer may frontload the maximum amount an Employee can accrue under the Ordinance at the beginning of the Year rather than requiring an Employee to accrue ESST hours as they work. Frontloading gives the Employee the maximum number of hours allowed to accrue in a Year immediately, at the beginning of the Year. The maximum required to be frontloaded each Year is 48 hours if the Employer pays out sick leave at the end of the Year, and 80 hours if the Employer does not pay out sick leave at the end of the Year.
 - 4.1.7.1 If an Employer pays an Employee for unused ESST at the end of a Year, the Employee is paid at the same hourly rate the Employee earns from employment. In no case shall this hourly rate be less than that provided under Chapter 224 of the Code, or any applicable minimum wage law.
 - 4.1.7.2 If an Employer opts to frontload, they must apply the same method of ESST accrual – payout or carry-over – to all employees.
- 4.1.8 Modifying Method of Accrual. Employers who switch methods of accrual must ensure that Employees have at least as many ESST hours available on the first day of the new reporting Year as the Employee had on the last day of the immediately preceding reporting Year.
- 4.1.9 Employers are not required to pay out unused ESST upon an Employee's termination, resignation, retirement, or other separation from employment so long as that Employer has met the obligations outlined in the Chapter.

4.2 Carrying Over ESST Balances from Year to Year

- 4.2.1 Unused accrued ESST carries over from Year to Year unless an Employer chooses to pay-out.
- 4.2.2 The maximum number of hours an Employer is required to allow an Employee to carry in the bank is 80. An Employer may opt to allow the Employee to carry over more.

- 4.2.3 Employers are required to permit Employees to maintain and/or use their carried over ESST time while concurrently accruing new ESST for every hour worked.

Example: Abdi begins working for a sporting goods store in Saint Paul and earns 30 hours in his first Year. In his second Year, he uses 5 hours of ESST. Abdi can still earn 48 hours and end the Year with 73 hours of ESST (30 hours – 5 hours = 25 hours. 25 hours + 48 hours = 73 hours of ESST).

4.3 ESST Accrual Method for Salaried, On-Call, and Seasonal Employees

- 4.3.1 Salaried Employees accrue ESST based on their expected hours worked per week.

Example: Jeremy is a salaried Employee who generally works at least 40 hours per week. After 3 weeks, Jeremy will earn 4 hours of ESST (40 hours per week X 3 weeks = 120 hours / 30 = 4 hours of ESST).

- 4.3.2 For Employees who are scheduled for on-call shifts and are paid for the scheduled time regardless of whether work is performed, Employers must calculate accrual of ESST based on all hours the Employee is scheduled.

- 4.3.3 For Employees who are scheduled for on-call shifts and are compensated only if work is performed, Employers may calculate accrual of ESST based only on hours actually worked.

Example: Sara works for Rick's Restaurant in Saint Paul near the Xcel Energy Center. The Wild play a hockey game on Thursday night, and there is often a rush of customers before and after the game. Rick's Restaurant puts Sara on call for the night from 4:00 pm – 10:00 pm. At 6:00 pm, Rick's Restaurant calls Sara in and she works until 10:00 pm. Rick's Restaurant pays Sara only for the 4 hours worked. Sara earns ESST for the 4 hours she works, not for the 6 hours she was on call.

- 4.3.4 When an Employee is separated from employment and rehired within 180 calendar days by the same Employer, the Employee is treated as if they never separated from employment. Previously accrued and unused ESST must be reinstated. The Employee is entitled to use the previously accrued ESST hours and accrue additional ESST hours once the Employee begins reemployment with the same Employer.

Example: Mai was hired by Smith’s Lawn Services and began work on May 1st and works until November 30th. From December 1st through April 30th of the following Year, Mai is separated from employment with Smith’s Lawn Services and performs no work for them. On May 1st of the following Year, Mai is reemployed by Smith’s Lawn Services. Since Mai was rehired within 180 days of separation by the same Employer, her previously accrued ESST will be reinstated, she can use the hours already accrued and can accrue more ESST hours.

5. How Employees Use ESST

([City of Saint Paul Ordinance §233.04](#))

5.1 Employee Usage of ESST in General

- 5.1.1 All Employees who perform at least 80 hours of work in a Year within the geographic boundaries of the City of Saint Paul can use ESST for the reasons outlined in the Ordinance for hours they are scheduled to perform work in Saint Paul.
- 5.1.2 Employees can use ESST for overtime hours they are scheduled to work or that they volunteered to work. ESST used for scheduled overtime is required to be paid only at an Employee’s regular rate, not at their overtime rate.
- 5.1.3 Employers are not required to permit use of ESST when an Employee is suspended or otherwise on leave for disciplinary reasons.
- 5.1.4 Employees who work at least 80 hours in 12 months in the geographic boundaries of the City of Saint Paul can begin using ESST immediately after their commencement of work.

Example: If Lodi begins working 30 hours per week on March 1 and works 150 hours in the 5 weeks between March 1 and April 5, they would be able to use up to 5 hours of ESST upon request.

5.2 Employer Requirements for Minimum Usage of ESST

- 5.2.1 If an Employee calls their Employer to request time off for any of the reasons listed under the ESST Ordinance, it shall be classified as a request to use available ESST.

- 5.2.2 Employees may use ESST in the smallest increment of time tracked by the Employer's payroll system provided that the smallest increment of time tracked by the Employer is not more than 4 hours.
- 5.2.3 If an Employer's smallest increment of time tracked is 4 hours and an Employee has an ESST balance below the minimum time allowed by the Employer, the Employer must allow the Employee to use their remaining balance.

Example A: Shawn works for Camera Exchange. Camera Exchange allows Employees to use ESST but requires Employees to use at least 4 hours of ESST upon request to use any. Shawn has 7 hours of ESST saved and requests time off to go to the doctor. Camera Exchange must allow Shawn to use ESST but can require that they use 4 hours.

Example B: However, after Shawn uses 4 hours, they need a follow-up doctor visit, so they request to use their remaining 3 hours of ESST. While this is below Camera Exchange's 4 hours minimum time required in the policy, Camera Exchange must allow Shawn to use the 3 hours of ESST that they have left.

5.3 Use of ESST by On-Call Employees

- 5.3.1 For Employees who are scheduled for on-call shifts and are paid for the scheduled time regardless of whether work is performed, Employers must permit use of ESST for any hours the Employee is scheduled.
- 5.3.2 For Employees who are scheduled for on-call shifts and are compensated only if work is performed, Employers must permit use of ESST only for hours the Employee was called in to work and would have received compensation.

6. Collective Bargaining and Prevailing Wage Exemption

[\(City of Saint Paul Ordinance §233.04\(g\)\)](#)

The provisions of this Chapter may be waived only in a collective bargaining agreement with a bona fide building and construction trades labor organization. For a waiver to be effective, it must explicitly reference sections 233.02 – 233.11 of the Code and clearly and unambiguously waive applications of those sections to such Employees. Construction contractors who pay at least the prevailing wage will be deemed compliant with the Ordinance.

7. Paying Employees When They Use ESST

[\(City of Saint Paul Ordinance §233.04\(c\)\)](#)

7.1 Paying ESST to Hourly, Salaried, and Commission Employees

7.1.1 Employers must compensate Employees using ESST at their standard hourly rate for hourly Employees or at an equivalent rate for salaried Employees.

7.1.2 ESST must be paid on the date the Employee would have been paid for work had the Employee not used ESST.

7.1.3 If an Employee uses ESST for scheduled overtime, the Employer is not required to pay the Employee at the overtime rate.

Example: Leticia is scheduled to work 5 hours of overtime on Saturday. Leticia's standard hourly wage is \$16/hour. She normally makes time-and-a-half working overtime, or \$24/hour. Leticia's Employer only has to pay her the standard rate of \$16/hour for the ESST used during her scheduled overtime.

7.1.4 To calculate the hourly rate of ESST for salaried or 100% commission paid Employees:

1. Take the Employee's totally annual salary.
2. Determine the Employee's weekly salary by dividing the annual salary by the number of weeks worked per Year.
3. Divide the weekly salary by the number of hours in the Employee's normal or average work week.

Example: John earns \$80,000 for an annual salary and is not paid by the hour. On average, John works 40 hours per week. His weekly salary is \$1,538.46 ($\$80,000 / 52 = \$1,538.46$). If John's normal work week is 40 hours, John's hourly salary is \$38.46 ($\$1,538.46 / 40 = \38.46). John's hourly ESST rate would be \$38.46.

7.1.5 Employers must maintain all coverage for any insurance policy when an Employee is using ESST. The Employee must continue to meet any cost they regularly pay for any insurance coverage.

7.1.6 Employees are entitled to return to employment at the same rate of pay when the leave commenced.

8. Tips, Commissions, and Other Fluctuating Wages

- 8.1 Employees are not entitled to compensation for lost tips or commissions.
- 8.2 For Employees paid on a commission or with tips, the hourly rate of pay is the base wage that Employee receives or the applicable minimum wage, whichever is greater.
- 8.3 For Employees who are 100% commission based, take the average annual amount paid in commission and calculate the weekly and hourly averages from the example in 7.1.4. For new Employees, use the average monthly commission for the number of months the Employee has been engaged with the Employer and calculate the average hourly rate.
- 8.4 For Employees whose rate of pay fluctuates within a single job title depending on what duties they are performing for the Employer, the hourly ESST rate is the standard hourly rate for the Employee.

Example: Richard is paid \$15.00 per hour as a grocer, but sometimes receives a “premium” rate of \$3.50 per hour extra for operating a forklift. Richard is scheduled to operate the forklift during his next shift but instead calls in sick and uses ESST. His ESST is paid out at \$15.00 per hour because that is his standard rate of pay.

- 8.5 For Employees whose rate of pay fluctuates between 2 different job titles, their hourly ESST rate is the standard hourly rate for the job they were scheduled to work when they used ESST.

Example: Bianca works 2 different jobs for a small law firm. Bianca regularly works 20 hours per week as a legal secretary and earns a standard rate of \$20 per hour. For the other 20 hours per week, she works as a paralegal and earns \$30 per hour. Bianca calls in sick for 2 days and uses ESST. Both days, she was scheduled to work as a paralegal. Her ESST is paid out at a rate of \$30 per hour because this was the standard rate for the time for which scheduled to work as a paralegal.

- 8.6 For Employees who are scheduled to work a shift of uncertain length, such as a shift that is defined by business needs rather than a specific number of hours, the Employer may determine payment for ESST based on hours worked by a replacement Employee. The replacement Employee either must have

worked the same shift or a similar shift. The Employer must demonstrate this by way of documentation if there is an investigation.

9. Piecework Compensation

For Employees who are paid on a piecework basis, the Employer calculates the Employee's rate of pay by doing the following:

1. Add together the Employee's total earnings for the most recent workweek in which no sick time was taken. This is the Employee's total weekly earnings.
2. Divide the total weekly earnings by the number of hours worked during the most recent workweek with no sick time used. This is the Employee's hourly ESST rate.

Example: Va Meng works in a call center. He takes calls and does data entry. Va Meng is paid \$1.00 for every call he takes. He is paid \$1.00 for every 30 entries he makes. Last week, Va Meng took 700 calls and entered 3,000 lines of data. He worked 30 hours. Va Meng was paid \$700 for his phone calls and \$100 for data entry. His total earnings were \$800 ($\$700 + \$100 = \800). His hourly rate is \$26.67 ($\$800 / 30 \text{ hours} = \26.67 per hour). Va Meng requests ESST the following week. His Employer must pay him for ESST at a rate of \$26.67 per hour.

10. When an Existing PTO Policy Complies with the Ordinance

[\(City of Saint Paul Ordinance §233.03\(d\)\)](#)

- 10.1 If an Employer has a PTO policy in place that meets or exceeds the minimum requirements of the Ordinance, the PTO policy is sufficient, and the Employer does not need to provide additional ESST.
- 10.2 When an Employer offers a combined or universal PTO leave policy made up of a combination of sick, personal, and vacation leave, the Employer may require an Employee to comply with the Employer's usual and customary notice and procedural requirements for absences or for requesting leave. However, notice requirements may not interfere with the purposes for which the leave is needed.

Example: Derrick's Employer has a PTO policy that meets the requirements of the Ordinance. That policy requires Derrick to provide notice 1 week in advance of taking leave. Under most circumstances, this is a permissible requirement. However, Derrick suddenly needs to take time off unexpectedly to care for his sick child. Because the Ordinance requires Derrick's Employer to allow him to use ESST for that purpose, they cannot deny him leave.

However, had Derrick requested time off for vacation instead, they could deny his request for PTO for lack of notice.

10.3 An Employer may require Employees to use other paid leave for the purposes of ESST provided that the Employer meets the minimum requirements of the Ordinance (such as accrual, use, carry over, Employee notification, record keeping, etc.).

10.4 If an Employee uses all paid leave under a general PTO policy for a reason unrelated to ESST, the Employer does not need to provide additional leave for ESST under the Ordinance.

Example: If Ashley's Employer offers 80 hours of PTO and Ashley uses all her PTO hours on a vacation, her Employer does not need to offer more paid time off for ESST because her Employer has provided the minimum amount of PTO required by the Ordinance.

10.5 An Employer providing a combined or universal leave such as a PTO policy that meets the minimum requirements of the Ordinance is not required to maintain records showing Employee reasons for use of the PTO (e.g., vacation, sick time, safe time, FMLA leave, etc.). The Employer is only required to maintain records indicating that PTO was used and how much was used.

10.6 If the Employer provides combined PTO leave to meet their ESST requirement, then the Employer's written ESST policy must inform Employees of their right to ESST and that it is being met by PTO.

11. Notice from Employee to Employer about Using ESST

[\(City of Saint Paul Ordinance §233.04\)](#)

11.1 An Employer may require an Employee to provide notice of an absence for ESST as long as the requirements are consistent with the Employer's regular practice and do not interfere with the purposes of the leave.

11.1.1 An Employee may provide reasonable notice of an absence for ESST without explicitly referencing the Ordinance or using the terms "earned sick and safe time."

11.1.2 An Employer may ask whether the absence qualifies for ESST, provided that the Employer does not violate the privacy and confidentiality provisions of the Ordinance (see [City of Saint Paul Ordinance §233.09](#)).

- 11.2 An Employer that requires notice of the need to use ESST must have a written policy containing reasonable procedures for Employees to provide notice of the need to use ESST and shall provide a written copy of such policy to Employees. If a copy of the written policy has not been provided to an Employee, an Employer shall not deny the use of ESST to the Employee on that basis (see [City of Saint Paul Ordinance §233.04](#)).
- 11.3 If an Employee knows they will need to use ESST in advance, an Employer may require advance notice of the intention to use Earned Sick and Safe Time but must not require more than 7 days' advance notice.
- 11.4 If the reason for ESST is unforeseeable, the Employee must provide notice as soon as practicable.
- 11.5 An Employer is not allowed to require an Employee to disclose the specific nature of the illness or specific reason for seeking safe time, beyond informing the Employer of their need for it (see [City of Saint Paul Ordinance §233.04](#)).
- 11.6 When an Employee uses ESST for more than 3 consecutive days, an Employer may require reasonable documentation that the paid time is being used for a reason that is consistent with the Ordinance. For purposes of the Ordinance, "consecutive" means any 3 days the Employee is scheduled to work, and does not have to be 3 consecutive calendar days (see [City of Saint Paul Ordinance §233.04](#)).
- 11.7 If there is a pattern of abuse of ESST by the Employee, the Employer may require reasonable documentation to verify that an Employee's use of ESST is consistent with the Ordinance. However, the Employer may not interfere with the Employee's ability to use ESST for reasons laid out in the Ordinance.
- 11.8 An Employer may require an Employee to provide reasonable documentation for ESST includes but is not limited to:
- 11.8.1 Any documentation that indicates the Employee or their Family Member sought and received medical treatment.
- 11.8.2 A written statement from the Employee indicating that the Employee is using or used ESST for a qualifying purpose covered by the ESST Ordinance. Statements can be written in the Employee's first language, can be in any format, and are not required to be notarized.

- 11.8.3 A court record or documentation signed by a volunteer or Employee of a victim services organization, an attorney, a police officer, or an antiviolence counselor.
- 11.9 If an Employee works between absences using ESST, the Employer may only request additional documentation for the second absence if at least 2 weeks have passed.
- Example:* Morgan pulls a muscle in their back and tells their Employer, Tom's Tubs, that they will be on leave for 3 days, from Monday – Wednesday and provides a doctor note. Morgan comes back to work on Thursday. On Thursday night, Morgan's back flares up again and they call and tells Tom's Tubs that they will be out again on Friday due to their back injury resurfacing. Tom's Tubs cannot require additional documentation for the second absence, because less than 2 weeks have passed.
- 11.10 An Employer cannot require disclosure of details relating to any medical condition, Domestic Abuse, Sexual Assault, or Stalking as related to an Employee's request to use ESST.
- 11.11 An Employer cannot require an Employee to find a replacement worker to cover any hours or shift during which an Employee uses ESST.

12. Confidentiality and Nondisclosure

[\(City of Saint Paul Ordinance §233.05\)](#)

- 12.1 Employers shall maintain the confidentiality of information provided by an Employee regarding any use of ESST.
- 12.2 Medical records must be kept as confidential and separate from personnel files. Employees can request the Employer destroy any medical records older than 3 years.
- 12.3 Employers may not discriminate against any Employee based on any records pertaining to ESST.

13. Employer Notice and Posting Requirements

[\(City of Saint Paul Ordinance §233.07 and §233.08\)](#)

- 13.1 Employers must provide a pre-hire notice to Employees at the beginning of their start date of their employment. The pre-hire notice must be in English,

and the primary language of the Employee as identified by the Employee. The pre-hire notice must include:

1. Employees are entitled to earn ESST under Chapter 233 of the Saint Paul Legislative Code.
2. When Accrual or Frontloading starts.
3. The rate at which an Employee accrues ESST.
4. The maximum number of hours an Employee may accrue in a calendar Year.
5. How ESST carries over to the next Year.
6. The Employer's notice requirements for using ESST.
7. The written policy requiring advance notice from Employee's requesting ESST under section 233.04(d).
8. The Employer's policy for any Employee suspected of abusing ESST.
9. That the Employee can file a complaint with the Department.
10. That Employer retaliation by the Employer is prohibited and that an Employee may file a civil action for retaliation.

13.2 Every Employer must distribute or post written policies on ESST and follow such written policies. An Employer's written policies must meet or exceed all the requirements of the Ordinance and these Rules. They must be in English, and the primary language of the Employee as identified by the Employee. Employers can satisfy the notice requirements by:

- 13.2.1 Regularly distributing the written ESST policies to each Employee personally, by regular mail or by e-mail.
- 13.2.2 Regularly distributing the written ESST policy to Employees through things like company newspapers or newsletters, check stubs, handbooks, or manuals, or posting on the company intranet.
- 13.2.3 Physically posting the policies in a noticeable place where notices to Employees are typically posted.

13.2.4 Signed acknowledgements from each Employee may be satisfactory for providing notice under this section.

13.3 The Department has available a standard Workplace Notice Poster for Employers in 5 different languages. An Employer may hang the standard Workplace Notice Poster in a noticeable place, such as in a breakroom, by a punch clock, or at some common work meeting place where it can be seen by Employees. Employers may also put an electronic copy in a web or app platform to satisfy written posting requirements. The Workplace Notice Poster must be in English, and the primary language of Employees as identified by the Employees.

13.4 Upon request of the Employee, an Employer must provide in writing or electronically, the Employee's current amount of ESST available and amount of ESST used in the Year. It will be deemed compliant if an Employer proactively puts an Employee's ESST balance on each pay stub per pay period or electronically in an online system where Employees can access their own information.

14. Records an Employer Must Keep

[\(City of Saint Paul Ordinance §233.09\)](#)

14.1 Employers must allow the Department access to records to investigate potential violations and to monitor compliance with the requirements of this Chapter.

14.2 Employer records must, at a minimum, maintain the following items for a 3-year period and provide to the Department upon request:

1. Employee name.
2. Job Titles.
3. Work and Personal Phone numbers.
4. Email address and mailing address.
5. Employee total hours worked in Saint Paul physically and remotely with corresponding dates.
6. Hourly rate of pay for each Year they are employed and for each job title.
7. Earned ESST time.

8. Used ESST time.
9. Amount of any ESST paid out.
10. Employee requests to use ESST.
11. Remote/Hybrid agreements.
12. ESST acknowledgement forms.
13. Employee handbook.
- 14.3 For salaried Employees who work in the geographic boundaries of the City of Saint Paul on a regular basis. Employers may retain records of the Employee's regular workweek hours, rather than tracking actual hours worked in Saint Paul, as long as the hours of a normal work week are used as the actual basis for the Employee's accrued and used ESST.
- 14.4 Once the Department notifies an Employer that an investigation has commenced, the Employer may not destroy any records until the Employer is notified by the Department that the investigation has concluded.
- 14.5 Upon receipt of a Notice of Investigation from the Department, an Employer must make their records available to the Department, per § 233.09 and 233.13. If an Employer does not maintain or retain adequate records or supply the required records within the timeframe established by the Department, it creates a rebuttable presumption that the Employer has violated the Ordinance.

15. Staffing Agencies and Temporary Employees

[\(City of Saint Paul Ordinance §233.02\)](#)

- 15.1 An Employee supplied by a staffing agency is an Employee of the staffing agency for purposes of the Ordinance, unless there is a contractual agreement stating otherwise.
- 15.2 All Employees, including temporary workers supplied by a staffing agency located outside the City, are entitled to ESST if they work within the geographic boundaries of the City for at least 80 hours in a Year.

16. Sale of Business: Effects on ESST

[\(Saint Paul City Ordinance §233.11\(b\)\)](#)

- 16.1 If an Employer sells its business or the business is otherwise acquired by another business, Employees retain and may use all accrued ESST if the Employee continues to work within the geographic boundaries of the City of Saint Paul for the successor Employer, regardless of where the successor's headquarters is located.
- 16.2 A successor Employer must provide Employees with its written ESST policies at the time of sale or acquisition, or as soon as practicable, which must include a policy that complies with the Ordinance.
- 16.3 Integrated Enterprises. The Department will determine the existence of an Integrated Enterprise by assessing the degree of control exercised by 1 entity over the operation of another entity. The factors in this assessment include, but are not limited to:
 - 16.3.1 Degree of interrelation between the operations.
 - 16.3.2 Degree to which the entities share common management.
 - 16.3.3 Centralized control of labor relations.
 - 16.3.4 Degree of common ownership or financial control over the entities.
- 16.4 If the Department determines an Integrated Enterprise exists, the integrated Employer must provide ESST to every Employee working within the geographic boundaries of the City of Saint Paul.

17. Implementation and Enforcement of the ESST Ordinance

[\(City of Saint Paul Ordinance §233.12 and §233.13\)](#)

The authority of the Director and the Department to implement, administer, and enforce this Chapter is clearly established and outlined at Saint Paul Legislative Code § 233.12 – 13.

17.1 Time Limitations

Any person alleging a violation of the Ordinance shall have the right to file a complaint with the Department within 3 years of the alleged violation.

17.2 Confidentiality of Information

Per City of Saint Paul Administrative Code § 11.03(d) the Department shall maintain the confidentiality of any complainant unless disclosure of such complainant's identity is necessary for resolution of the investigation or otherwise required by law. The Department shall, to the extent practicable, notify such complainant that the Department will be disclosing their identify prior to such disclosure.

17.3 Investigation Process

The Department will investigate all complaints and attempt to resolve all complaints through informal mediation between the complainant, the Employer, and the Department. This process is referred to as the Pre-Determination Settlement Process and can be entered into at any time during an investigation.

17.3.1 At any point in an investigation, the Department may offer the opportunity for the City and Respondent to enter into a Pre-Determination Settlement Agreement conversation. This conversation is an opportunity for the parties to negotiate a Pre-Determination Settlement Agreement. If the Respondent does not choose or is unwilling to enter in a Pre-Determination Settlement Agreement, the Department may continue the investigation, ultimately issuing a written notice of Determination of Violation or No Violation. Determinations are made based on a preponderance of the evidence standard.

17.3.2 The Department begins an investigation when a complaint is received. The Department initiates communication with an Employer by sending a Notice of Investigation to the Employer via US Mail. The Notice of Investigation sets forth the allegations and the pertinent facts, and will request an Employer written position statement, records and other information to respond to the allegations in a written response. The Notice of Investigation must also inform the Employer that retaliation is prohibited.

17.3.3 The Employer must provide a written response, via US Mail, fax or e-mail, to the Department within 30 days of receiving the Department's Notice of Investigation. The written response must specifically state the Employer's position regarding the allegations set forth in the Notice of Investigation and include all records and information requested. If the Employer admits to violating the Ordinance, they must

answer how they will remedy the violation. If the Employer denies the allegations, they must specifically state how the Employer is in compliance with the Ordinance.

17.3.4 The Department may also amend the initial Notice of Investigation and resend to the Employer at any point in the investigation. If an Employer does not maintain or retain adequate records or supply the required records and information within the timeframe established by the Department, it creates a rebuttable presumption that the Employer has violated the Ordinance.

17.3.5 Within 7 days of receiving the Notice of Investigation, the Employer must notify its Employees that the Department is conducting an investigation. The Department will provide a form for the Employer to display. An ESST violation notice will need to be posted in area where it is visible to Employees that an open investigation has been initiated. The Employer has 7 days to send the Department a photo of where the notice has been posted. The Employer must post the notice in English and the primary language of Employees as identified by the Employees. The Employer is permitted to make additional copies to post in more than 1 location or can post in the online system that Employees can access. The notice must be posted until the case is closed and the Department has confirmed the Respondent or Employer is in compliance.

17.3.6 If the Employer fails to provide a written response within 30 days or fails to provide any other requested information, the Department will make its decision without the benefit of the Employer's input. The Department will rely only on the information provided to the Department. The Employer may request additional time to submit the written response or a response to a request for further information to the Department. Such a request should include the amount of time requested and the reason that the Employer cannot respond within the original time allowed. The Department's grant or denial of this request is not appealable.

17.4 Contents of Notice of Violations

If the Department determines that cause exists to believe that an Employer has violated this Chapter, the City attorney's office on behalf of the Department shall issue a Notice of Violation to the Employer signed by the Director and the City attorney's office. The Notice shall advise the Employer of the following:

1. That the City believes the Employer has violated this Chapter.
2. The basis for the City's belief regarding the violations.
3. That the Employer is entitled to a hearing before any restitution or penalty is imposed.
4. That the Employer can choose to admit or deny the allegations.

17.4.1 If the Employer wishes to admit the allegations but contest the proposed restitution or sanction, the Employer may request a hearing before the City Council regarding the proposed restitution or, if applicable, penalty.

17.4.2 If the Employer wishes to deny the allegations, then the Employer must request a hearing before a hearing examiner.

17.4.3 Failure to respond in writing within 15 working days of the Notice of Violation shall be deemed an admission of the allegations and acceptance of the proposed restitution and, if applicable, penalty.

17.5 Determination of Violation or No Violation

17.5.1 The Determination will be sent to the complainant who filed the suspected violation report and the Employer via either US Mail, fax, or e-mail.

17.5.2 In instances when the Department issues a Notice of Determination of No Violation, the complainant who filed the suspected violation report may, within 21 days, file a request for reconsideration of a Notice of Determination of No Violation with the Director. The Director must provide a written response on the reconsideration within 10 days.

17.5.3 Failure to respond in writing within 15 working days of a Notice of Violation is deemed an admission of the allegations and acceptance of the proposed restitution and fines.

17.5.4 There are 2 options for Employer to appeal:

17.5.4.1 If the Employer admits the allegations but wants to contest the proposed restitution or sanction, the

Employer may request a hearing before the Council on that issue.

17.5.4.2 If the Employer denies the allegations and the rejects the restitution or sanction, the Employer may request a hearing before a hearing examiner.

17.5.4.2.1 The hearing examiner shall hear all evidence as may be presented on behalf of the City and the Employer.

17.5.4.2.2 Both parties shall be provided an opportunity to present evidence and argument as well as meet adverse testimony or evidence by reasonable cross-examination and rebuttal evidence. The hearing examiner may, in their discretion, permit other interested persons the opportunity to present testimony or evidence or otherwise participate in such hearing. Following the hearing, the hearing examiner shall present to the council written findings of fact and conclusions of law together with a recommendation regarding the appropriate sanction, including restitution.

17.5.4.2.3 Record; evidence. The hearing examiner shall receive and keep record of such proceedings, including testimony and exhibits, and shall receive and give weight to evidence, including hearsay evidence, which possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs.

17.5.4.2.4 The City must prove that the Employer violated 1 or more provisions of this Chapter by a preponderance of the evidence.

- 17.5.4.3 City Council Determination. The City Council shall consider the evidence contained in the record, the hearing examiner's recommended findings of fact and conclusions, and shall not consider any factual testimony not previously submitted to and considered by the hearing examiner. The Council may accept, reject or modify the findings, conclusions and recommendations of the hearing examiner.
- 17.5.4.4 City Council Action. The City Council shall determine whether the Employer has violated this Chapter and shall by resolution determine whether to adopt all or part of the findings, conclusions, and recommendations of the hearing examiner.
- 17.5.4.5 Imposition of costs. The City Council may impose upon any respondent some or all of the costs of a contested hearing before an independent hearing examiner. The costs of a contested hearing include, but are not limited to, the costs of the hearing examiner, stenographic and recording costs, copying costs, City staff and attorney time for which adequate records have been kept, rental of rooms and equipment necessary for the hearing, and the cost of expert witnesses. The Council may impose all or part of such costs in any given case if the position, claim or defense of the Employer was frivolous, arbitrary or capricious, made in bad faith, or made for the purpose of delay or harassment.

18. Remedies for Violation of ESST Ordinance

[\(City of Saint Paul Ordinance §233.13\(d\)\)](#)

The Department may impose the following remedies based on the nature of the violation:

- 18.1 Reinstatement. If an Employee is terminated or suspended from work for lawfully exercising their right to ESST, the Department may order reinstatement. The Employer and the Employee may, with the approval of the Department, agree to any alternative resolution or remedy, such as financial compensation. Alternatives to reinstatement are not exclusive of other remedies under the Ordinance if additional violations occurred.

- 18.2 The Department may order back pay and restitution for any out-of-pocket expenses resulting from the violation of this Chapter, as well as other financial remedies and fines as outlined by section 233.13 of the Ordinance.
- 18.3 The Department may order public interest terms as additional remedies, including but not limited to policy corrections, Employee training, and compliance reporting.

19. Employer Retaliation Against Employees is Prohibited

[\(City of Saint Paul Ordinance §233.06\)](#)

- 19.1 A complaint or any other communication by a person triggers the protections of this section regardless if verbal or written and if a complaint makes reference to the Chapter or not.
- 19.2 Employers may not retaliate against any Employee for exercising any rights under the Ordinance. Employers also may not interfere with Employee rights under the Ordinance.
 - 19.2.1 Such rights include, but are not limited to, the right to ESST pursuant to this Chapter; the right to make inquiries about the rights protected under the Ordinance; the right to inform others about their rights; the right to inform the person's Employer, union, or similar organization, and/or the person's legal counsel or any other person about an alleged violation; the right to file an oral or written complaint with the Department or bring a civil action for an alleged violation; the right to cooperate with the Department in its investigations; the right to testify in a proceeding under or related to this Ordinance; the right to refuse to participate in an activity that would result in a violation of City, state, or federal law; and the right to oppose any policy, practice, or act that is unlawful under the Ordinance.
 - 19.2.2 Retaliation may include threats to report a person to immigration authorities.
- 19.3 It is not retaliation for an Employer to investigate an Employee's suspected abuse of ESST (such as using ESST as vacation time rather than as sick or safe time). However, these investigations may not interfere with the Employee's ability to use ESST or exercise their rights under the Ordinance.
- 19.4 Employers cannot give absence or attendance points to an Employee who has requested to use ESST.

Example: If Jamila called in sick and requested to use ESST an hour prior to her shift starting, the Employer cannot give Jamila a point to reprimand her for calling in only 1 hour prior to the start of her shift.

20. Civil Enforcement and Private Right of Action

(City of Saint Paul Ordinance §233.15 and §233.06(c))

- 20.1 Where prompt compliance is not forthcoming with a final Determination of Violation, the Department may refer the action to the City attorney to consider initiating a civil action against an Employer for violating any requirement of this Chapter and, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation.
- 20.2 A person injured by a violation of 233.06 of the Ordinance may bring a civil action in the district court to recover any and all damages recoverable at law, together with costs and disbursements, including reasonable attorney's fees, and may receive injunctive and other equitable relief as determined by the court.
- 20.3 Employees may file a lawsuit in district court if they allege that their Employer interfered with their right to use ESST. An Employee or other person who has reported a violation of this Chapter may:
 - 20.3.1 Bring a civil action in district court within 45 days after receipt of a notice of Determination of No Violation of this Chapter.
 - 20.3.2 Bring a civil action in district court within 45 days upon notice that the Director has reaffirmed a Determination of No Violation of this Chapter if the complainant requested reconsideration. Notice is presumed to be 5 days from the date of service by mail of the written notice.

21. Other Leave Such as Family Medical Leave Act (FMLA)

An Employee's use of ESST also may qualify for concurrent leave under federal, state or other local laws (e.g., US Family Medical Leave Act). The ESST Ordinance operates independently of any other leave such as FMLA.